

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



THE STATE OF TEXAS
COUNTY OF TRAVIS
I hereby certify that this is a true and correct copy of a Texas Natural
Resource Conservation Commission document, which is filed in the
permanent records of the Commission.
Given under my hand and the seal of office on

La Donna Castañuela MAY 19 2000

La Donna Castañuela, Chief Clerk
Texas Natural Resource
Conservation Commission

DOCKET NUMBER 2000-0128-SPF

IN THE MATTER OF
THE SITE KNOWN AS
BALDWIN WASTE OIL
STATE SUPERFUND SITE

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BEFORE THE
TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION

AN ADMINISTRATIVE ORDER

I. Introduction

On February 24, 2000, the Texas Natural Resource Conservation Commission ("Commission" or "TNRCC") considered the Executive Director's allegations of the existence of a release of hazardous substances into the environment on, at or from BALDWIN WASTE OIL STATE SUPERFUND SITE ("Site") that poses an imminent and substantial endangerment to the public health and safety or the environment pursuant to the Texas Solid Waste Disposal Act, TEX. HEALTH AND SAFETY CODE ANN., Chapter 361 (the "Act"), and the Executive Director's requested relief, including but not limited to issuance of a Commission order to require persons responsible for solid waste to conduct Remedial Activities which include Remedial Action ("RA") and Post Closure Activity, as authorized by Sections 361.188 and 361.272 of the Act.

After proper notice, the Texas Natural Resource Conservation Commission makes the following Findings of Fact and Conclusions of Law:

II. Findings of Fact

- A. The following potentially responsible parties did not agree to this Administrative Order:
- Mr. Elton Baldwin;
 - Brownsville Navigation District;
 - Brownsville Steel and Salvage;
 - Caleb Brett USA, Inc.;
 - Consolidated Andy/Consolidated Steel Corp.
 - EW Saybolt and Company, Inc.;

Gulf Energy Refining Corp./Rio Grande Crude Refining, Inc.;
Joiner, Inc.;
Mo-Vac Services Company;
Petraco - Valley Oil and Refining Company/Petraco Oil;
Petroleum Carrier Company, Inc.;
Philen Shipping Company;
SGS Control Services, Inc.;
Mr. Robert Sutton and
Teal and Company

- (1) the owners/operators of the Site;
- (2) were the owners/operators of the Site at the time response costs were incurred;
- (3) owned or operated the Site at the time of processing, storage, or disposal of benzene;
- (4) by contract, agreement, or otherwise, arranged to process, store, or dispose of, or arranged with a transporter for transport to process, store, or dispose of benzene owned or possessed by the potentially responsible parties, or by any other person or entity at the Site; or
- (5) accept or accepted any benzene for transport to the Site selected by the transporter.

- B. The following potentially responsible parties agreed to this Administrative Order as De Minimis Responsible Parties:
None.
- C. The following potentially responsible parties agreed to this Administrative Order as Agreeing Respondents but do not admit liability except for the purpose of enforcing this Administrative Order:
None.
- D. When ranked, the Site had a State Superfund Hazard Ranking System score of 11.5.
- E. The portion of the Site used for rankings (State Registry) is described as follows:

The North 420 feet of Lot 5, Block 6, on a 1.98 acre tract, more or less in the George H. Paul Subdivision, of the Famous Driscoll Land Survey, in Volume A, Page 81 in the map records of Nueces County, Texas.
- F. The Site consists of the area listed in Item E above. In addition, the Site includes any areas outside the area listed in Item E above where, as a result either directly or indirectly, of a release of hazardous substances from the site, hazardous substances have been deposited, stored, disposed of or placed or otherwise come to be located.

- G. The Site was listed in the Texas Register on January 22, 1988, 13 Tex. Reg. 427-428 (1988).
- H. The Site has historically been used as a waste oil processing facility.
- I. Substances at the Site include, but are not limited to, the substances listed in Exhibit E attached to this Agreed Order. Substances listed in Exhibit E have been processed, deposited, stored, disposed of, or placed or otherwise came to be located on the area described in Item E.
- J. The substances listed in Exhibit E have been documented in groundwater at the Site.
- K. The substances listed in Part 2 of Exhibit E are:
1. substances designated under Section 311(b)(2)(A) of the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1321);
 2. elements, compounds, mixtures, solutions, or substances designated under Section 102 of the environmental response law;
 3. hazardous wastes having the characteristics identified under or listed under Section 3001 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. Section 6921), excluding wastes, the regulation of which the federal Solid Waste Disposal Act (42 U.S.C. Section 6921 et seq.) has been suspended by Act of Congress;
 4. toxic pollutants listed under Section 307(a) of the Federal Water Pollution Control Act (33 U.S.C. Section 1317);
 5. hazardous air pollutants listed under Section 112 of the federal Clean Air Act, as amended (42 U.S.C. Section 7412); or
 6. any imminently hazardous chemical substances or mixtures with respect to which the administrator of the Environmental Protection Agency (EPA) has taken action under Section 7 of the Toxic Substances Control Act (15 U.S.C. Section 2606).
- L. The substances listed in Exhibit E include, but are not limited to the following: garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional

activities, or hazardous substances, for the purposes of Texas Health & Safety Code §§ 361.271-277, 361.280, and 361.343-361.345.

- M. Substances at the Site listed in Exhibit E are or threaten to be spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.
- N. Potential pathways for exposure include ingestion of contaminated groundwater.
- O. The levels of benzene pose a carcinogenic risk of greater than 1×10^{-6} or a toxicity hazard index of greater than 1.0.
- P. The substances at the Site are not capable of being managed separately under the Remedial Action plan.
- Q. On January 22, 1988, the Commission provided a written notice of the listing of the Site on the State Registry to each identified potentially responsible party ("PRP") at the PRP's last known address.
- R. On April 23, 1999, the Commission provided the written notice of the public meeting and of the opportunity to comment on the proposed Remedial Action as specified in Sections 361.187(b) and (c) of the Act to each identified PRP at the PRP's last known address.
- S. On June 8, 1999, each identified PRP was provided an opportunity to fully fund or perform the proposed Remedial Activities, as specified in Section 361.187(d) and 361.133 (c) of the Act.
- T. Except for the performance of an investigative study prior to emergency removal action, no actions have been voluntarily undertaken by the persons listed in Items A and B of Section, FINDINGS OF FACT, of this Administrative Order.
- U. The Remedy Selection Document ("RSD") is attached to this Administrative Order as Exhibit A and is made a part of this Administrative Order.
- V. The remedy proposed in Exhibit A is selected as the remedy to be implemented in accordance with this Administrative Order.

III. Conclusions of Law and Determinations

- A. The potentially responsible parties listed in Items A, B and C of Section II, FINDINGS OF FACT, of this Administrative Order are responsible parties pursuant to Section 361.271 of the Act.

- B. The substances listed referenced in Item J of Section II, FINDINGS OF FACT, of this Administrative Order, which are found at the Site are hazardous substances as defined in Sections 361.003(11) of the Act.
- C. The substances referenced in FINDINGS OF FACT, of this Administrative Order, which are found at the Site are solid wastes as defined in Sections 361.003(34) of the Act.
- D. Hazardous substances were deposited, stored, disposed of, or placed or otherwise came to be located at the Site, and solid wastes were stored, processed or disposed and discarded at the Site.
- E. The Site is a "facility" as defined in Section 361.181(c) of the Act. The Site is a "solid waste facility" as defined in Section 361.003 (36) of the Act.
- F. 30 TAC § 335.342 defines "imminent and substantial endangerment" as follows: A danger is imminent if, given the entire circumstances surrounding each case, exposure of persons or the environment to hazardous substances is more likely than not to occur in the absence of preventive action. A danger is substantial if, given the current state of scientific knowledge, the harm to public health and safety or the environment which would result from exposure could cause adverse environmental or health effects.
- G. There has been a release (as defined in Section 361.003(28) of the Act) of hazardous substances and solid waste into the environment at the site that pose an imminent and substantial endangerment (as defined in 30 TAC § 335.342) to the public health and safety or the environment.
- H. The release or threatened release of hazardous substances and solid wastes into the environment have not been proven to be divisible pursuant to Section 361.276 of the Act.
- I. The actions required by this Administrative Order are reasonable and necessary to protect the public health and safety, and the environment.
- J. The facility is ineligible for listing on the National Priorities List ("NPL").
- K. Funds from the Federal Government are unavailable for the Remedial Activities at this facility because it is ineligible for the NPL.

IV. Definitions

“Exhibit A”	Remedy Selection Document (“RSD”)
“Exhibit B”	Reserved
“Exhibit C”	Reserved
“Exhibit D”	Sample Deed Certification of Remedial Action
“Exhibit E”	Substances at the Site
“Exhibit F”	Reserved
“Agreeing Respondent”	The potentially responsible parties listed in <u>Item C of Section II, FINDINGS OF FACT</u> , of this Administrative Order.
“De Minimis Responsible Party”	The potentially responsible parties listed in <u>Item B of Section II, FINDINGS OF FACT</u> , of this Administrative Order.
“Demobilization”	The phase of the Remedial Action in which equipment used for Remedial Action is dismantled and removed from the Site.
“Effective Date”	The effective date of this Administrative Order is ten (10) days after the issue date of this Administrative Order.
“Executive Director”(“ED”)	The Executive Director (“ED”) of the Texas Natural Resource Conservation Commission or a designee.
“Facility Coordinator”	The individual designated by the Performing Party to oversee implementation of the activities required in this Administrative Order on behalf of Performing Party and to coordinate communications with the TNRCC.
“Parties”	The Respondents and the Commission.
“Performing Party(ies)”	A Performing Party includes Respondents and potentially responsible parties who did not consent to this Administrative Order but who have funded or performed the work required by this Administrative Order.
“Post Closure”	The phase of the Remedial Activities in which groundwater monitoring, surficial maintenance, any necessary groundwater recovery, and other similar activities are undertaken to ensure that the remedy continues to perform as designed.

"Project Manager"	The individual designated by the "Executive Director" to oversee implementation of this Administrative Order on behalf of TNRCC and to coordinate communications with the Performing Party.
"Remedial Action" ("RA")	For purposes of this Administrative Order, the phase of the Remedial Activities in which the remedy is undertaken through implementation of the selected remedy specified in Exhibit A of this Administrative Order. The areal extent for the Remedial Action is not limited to the Site. It includes all suitable areas in proximity to the contamination necessary for implementation of the Remedial Activities.
"Remedial Activities"	The implementation of the Remedial Design ("RD"), Remedial Action ("RA") and Post Closure Activity of the selected remedy in accordance with this Administrative Order.
"Remedial Design" ("RD")	The phase of the Remedial Activities in which engineering plans and technical specifications are developed for implementation of the Remedial Action.
"Respondent"	Collectively, the potentially responsible parties that are listed in Item A or C of Section II, FINDINGS OF FACT, of this Administrative Order, that have signed this Administrative Order, and that fund or perform the work required by this Administrative Order.
"Site Representative"	As to TNRCC, those persons designated by the TNRCC Project Manager as authorized to oversee activities pursuant to this Administrative Order; and as to Performing Party, those contractors and subcontractors hired in connection with the Remedial Activities.
"Submittal of Deliverables"	Delivery of five (5) complete copies of each document or notice described herein to the TNRCC Central Office in Austin.
"Supervising Contractor"	The individual, company or companies retained in the role of Project Manager, Remedial Designer, Remedial Action Contractor, or Remedial Action Quality Assurance Official on behalf of the Performing Party to undertake and complete the Remedial Activities. The Supervising Contractor cannot assume both the role of the Monitor Well Closure Activities

Contractor and the Monitor Well Closure Quality Assurance
Official.

V. Order

Therefore, the TNRCC orders:

- A. The Site shall continue to be listed on the State Registry of Superfund Sites.
- B. Reserved.
- C. Performing Party shall reimburse the Hazardous and Solid Waste Remediation Fee Account for all costs of Pre-Remedial Investigation, Remedial Investigation (RI), Feasibility Study (FS), and oversight. The Responsible Party listed in Item A of Section II, FINDINGS OF FACT, of this Administrative Order shall, in addition, reimburse the Hazardous and Solid Waste Remediation Fee Account for all costs incurred by the Account in implementing the RD, RA, Post Closure Activity and oversight. Reimbursement(s) shall be made within sixty (60) days after receipt of a Demand Letter from the TNRCC stating the amount owed.
- D. This Administrative Order shall apply to and be binding upon Performing Party and any De Minimis Responsible Party, their agents, successors, and assigns. Performing Parties are jointly and severally responsible for carrying out all activities required by this Administrative Order. No change in the ownership or corporate status, and no acquisition of Performing Party shall alter the responsibilities under this Administrative Order.
- E. Performing Party shall provide a copy of this Administrative Order to all current and future lessees of the Site during the pendency of this Order and to any prospective owners or successors before all or substantially all property rights, stock, or assets are transferred. Performing Party shall provide a copy of this Administrative Order to all contractors, subcontractors, laboratories, and consultants retained by Performing Party to perform any work under this Administrative Order, within thirty (30) days after the Effective Date of this Administrative Order or on the date such services are retained, whichever date occurs later. Notwithstanding the terms of any contract, Performing Party is responsible for compliance with this Administrative Order and for ensuring that its contractors and agents comply with this Administrative Order.
- F. Within forty-five (45) days after the Effective Date of this Administrative Order, each Party that owns real property at the Site shall record a copy or copies of this Administrative Order, with all exhibits, in the appropriate office where land ownership and transfer records are filed or recorded, and shall ensure that the recording of this Administrative Order is indexed to the titles of each and every property at the Site so

as to provide notice to third parties of the issuance and terms of this Administrative Order with respect to those properties. Each Party that owns real property at the Site shall, within sixty (60) days after the Effective Date of this Administrative Order, send notice of such recording and indexing to TNRCC. The obligations and restrictions set forth in this Administrative Order or developed pursuant to this Administrative Order shall run with the land and shall be binding upon any and all persons who acquire any interest in any real property comprising all or any part of the Site.

- G. The appropriate land use for the proposed remedy is residential land use. Any change in use of the listed facility shall be pursuant to Section 361.190 of the Act. Not later than ninety (90) days before any transfer of any property interest in any property included within the Site, the Party that owns or leases real property at the Site shall submit the transfer documents to TNRCC.
- H. All aspects of the work to be performed by Performing Party pursuant to this Administrative Order shall be under the direction and supervision of a qualified Supervising Contractor. Within ten (10) days after the Effective Date of this Administrative Order, Performing Party shall notify TNRCC in writing of the name, title, qualifications, license and permit of any Supervising Contractor proposed to be used in carrying out work under this Administrative Order. It is the responsibility of Performing Party to demonstrate that the proposed Supervising Contractor has any necessary licenses to do business in the State of Texas and necessary permits to perform work under this Administrative Order. If at any time Performing Party proposes to use a different Supervising Contractor, Performing Party shall notify TNRCC before the new Supervising Contractor performs any work under this Administrative Order.
- I. The terms of this Administrative Order may be amended by agreement of all non-defaulting Performing Parties and any De Minimis Responsible Party upon approval by the Commission after notice to all Parties.
- J. Community Relations Plan: The Performing Party shall provide all the necessary information and assistance for TNRCC's Community Relations personnel to implement the Community Relations Plan.
- K. The Performing Party shall comply with all Sections of the Administrative Order, including implementation of the remedy presented in Exhibit A, Remedy Selection Document. The Remedial Activities shall be undertaken in the following Phases:
 - 1. Post Closure Activity - Groundwater Monitoring Activity
 - a. Within thirty (30) days after the effective date of the Administrative Order, the Performing Party shall submit a draft Groundwater

Monitoring Activity Plan (GMAP). The draft GMAP shall describe all sequences, procedures and requirements for implementing operation and maintenance in accordance with this Administrative Order. The Groundwater Monitoring Activity Plan shall, at a minimum, include the following:

- (1) Groundwater Monitoring Sampling and Analysis Plan (GMSAP) shall describe:
 - (a) The specific sampling and analytical protocols to be implemented. The work performed by Performing Party pursuant to this Administrative Order shall, at a minimum, achieve the performance standards specified in the Remedy Selection Document (Exhibit A) by collection and analysis of samples from the groundwater. A sufficient number of samples shall be collected and analyzed in accordance with the Remedy Selection Document (Exhibit A) to both accurately assess the risk to human health and the environment posed by the facility or area and to demonstrate the attainment of cleanup levels.
- (2) (a) The Groundwater Monitoring Activities Schedule (GMAS) shall include the specific mobilization date to begin the Groundwater Monitoring Activities. The GMAS shall summarize the sequence of submittals as required in this Administrative Order, including anticipated TNRCC review times, and shall list milestone dates, or milestone windows, for each submittal required by this Administrative Order.
- (3) The Groundwater Monitoring Quality Assurance Project Plan (QAPP) shall provide documentation of the requirements that should be met to ensure that the data collected is useable for the intended purpose. The TNRCC should be able to verify that confirmatory sampling will be completed in a manner which will ensure reliable analytical results. Analytical data submitted to the TNRCC shall include a discussion of the data review/validation procedures performed on the analytical data and a discussion of any problem or anomaly observed in the field and/or laboratory that might affect the quality of the data.
 - (a) The QAPP shall be developed to meet the requirements specified in the USEPA Guidance on

Quality Assurance Project Plans EPA/600/R-98/018,
February 1998, or

- (b) the State Superfund Program QAPP (or Remediation Division QAPP) can be reviewed as written and amended with site-specific exceptions and/or additions, and then adopted by reference in the Sampling Plan. All exceptions and/or additions to the State Superfund Program QAPP (or Remediation Division QAPP) shall be included in Appendix A of the Sampling Plan. Appendix A shall be entitled "Quality Assurance Project Plan for the Baldwin Waste Oil State Superfund Site" and the first sentence in the Appendix shall state "This Sampling Plan and the State Superfund Program QAPP (document number 970715.1), including the exceptions and/or additions below shall constitute the Groundwater Monitoring Action Sampling and Analysis Plan for the Baldwin Waste Oil State Superfund Site."
 - (c) The Groundwater Monitoring QAPP shall describe the approach to quality assurance at the Site and shall specify a quality assurance official (QA Official), independent of the Groundwater Monitoring action contractor, to conduct a quality assurance program during the Groundwater Monitoring phase of the project.
- b. The TNRCC shall provide comments on the draft Groundwater Monitoring Activity Plan.
 - c. Within thirty (30) days after receipt of TNRCC's comments on the Draft Groundwater Monitoring Activity Plan, the Performing Party shall resubmit the Final Groundwater Monitoring Activity Plan with a summary note. The summary note shall clearly indicate how this document has satisfactorily addressed each comment from TNRCC's previous comments and any other changes made to this document.
 - d. TNRCC will notify the Performing Party of its approval/disapproval of the Final Groundwater Monitoring Activity Plan with comments.

- e. Upon approval of the Final Groundwater Monitoring Activity Plan, the Performing Party shall initiate the Groundwater Monitoring Activity Phase in accordance with the schedule included in the approved Groundwater Monitoring Activity Plan.
- f. Upon TNRCC approval, the documents comprising the Final Groundwater Monitoring Activity Plan are incorporated into this Administrative Order as requirements of this Administrative Order and shall be an enforceable part of this Administrative Order.
- g. At least ten (10) days prior to the initial scheduled mobilization, Performing Party shall submit:
 - (1) A list of the name, title and qualifications of any Groundwater Monitoring Contractor proposed to be used in carrying out work under this Administrative Order. It is the responsibility of Performing Party to demonstrate that the proposed Contractor is licensed to do business in the State of Texas and has the necessary permits to perform any work under this Administrative Order. If at any time Performing Party proposes to change any Contractor, Performing Party shall notify TNRCC 30 days prior to the change.
 - (2) The Groundwater Monitoring Health and Safety Plan, prepared by the Groundwater Monitoring Activities contractor. The Health and Safety Plan shall conform to applicable Occupational Safety and Health Administration's regulations, including but not limited to 29 CFR 1910 and 1926. TNRCC may review the plan, but will not approve or disapprove the submittal. If at any time Performing Party changes the contractor, Performing Party shall submit a Groundwater Monitoring Health and Safety Plan prepared by the new contractor in accordance with this Section.
- h. Within 45 days of each field sampling event conducted as part of the Groundwater Monitoring, Performing Party shall submit a Sampling Report to TNRCC. The Sampling Report shall include, at a minimum:
 - (1) All laboratory reports generated through the analysis of the samples;
 - (2) A summary table showing the analytical results received for benzene.

- (3) A table showing the analytical results received to date for each well sampled, as well as a graph showing these results versus time.
 - (4) A copy of the field notes taken by the Contractor during the well sampling.
- i. Performing Party shall submit a written certification to TNRCC's Designated Project Manager regarding any shipment of hazardous substances from the site. Performing Party shall provide all relevant information for the shipments as soon as practicable after the award of the contract and before the hazardous substances are actually shipped.
 - (1) The certification shall include the following information:
 - (a) The name and location of the facility to which the hazardous substances are to be shipped;
 - (b) The type and quantity of the hazardous substances to be shipped;
 - (c) The expected schedule for the shipment of the hazardous substances; and
 - (d) The method of transportation and the name, address, and phone number of the transporter.
 - (2) Performing Party shall certify that selected receiving facilities and transporters meet the following criteria:
 - (a) There is no current enforcement order imposed on the receiving facility or transporter by the regulating authorities; and
 - (b) The receiving facility and the transporter are permitted to accept the specific hazardous substances by the regulating authorities.
 - (3) Performing Party shall certify that it has no knowledge that the receiving facility and transporter are non-compliant with any applicable or relevant and appropriate Federal, State, and local requirements.

- j. At the point that two consecutive sampling events of all monitoring wells have not shown any values of substances in excess of the values provided in the Remedy Selection Document (Exhibit A), the Performing Party may request approval from TNRCC to stop the sampling events and close the monitor wells. The request to close the monitor wells shall include the schedule and the name, title, qualifications, license and permit of any Post Closure Action Contractor proposed to be used. The monitor wells shall not be closed without the specific written concurrence of the TNRCC.
- k. TNRCC may inspect the site work as it progresses to evaluate compliance with the schedule. In addition, at the point of achieving completion of the site work, Performing Party shall submit a certification to TNRCC that site work is complete and that the remedy has attained all applicable performance standards specified in the RSD. TNRCC may conduct an inspection of the work. If TNRCC identifies items to be corrected or completed, Performing Party shall immediately correct or complete these items. When TNRCC concurs that site work is apparently complete, TNRCC will issue a notification confirming this to Performing Party. The date of TNRCC's notification will be considered the date of completion of the site work.
- l. No later than thirty (30) days after the Performing Parties' receipt of concurrence that applicable performance standards have been achieved, each party that owns property at the Site shall record a copy or copies of the deed certification(s) in the appropriate office where land ownership and transfer records are filed or recorded. Each party that owns property at the Site shall ensure that the recording of these documents is indexed to the titles of each and every property at the Site so as to provide notice to third parties of the deed certification(s) pertaining to use with respect to those properties. Each party that owns property at the Site shall send evidence of such recording and indexing to the TNRCC. In the event that a party that owns property at the site is not available because they cannot be located, the Performing Party shall perform the required deed notice/certification, and provide proof of such action.
- m. After TNRCC's receipt of the evidence of the deed certification(s) and certification of completion of Groundwater Monitoring Activities (GMA) from each property owner or other party, TNRCC will issue a Certification of Completion of the GMA Phase.

2. Post Closure Activity - Monitor Well Closure Activities

- a. Within thirty (30) days after the TNRCC issues the Certification of Completion of the GMA phase, the Performing Party shall submit a schedule for Monitor Well Closure Activities. The schedule for Monitor Well Closure Activities shall include specifications for the closure of the monitor wells. The well closures shall be implemented in accordance with 30 TAC Chapter 238.
- b. The TNRCC shall provide comments on the draft Monitor Well Closure Activities schedule.
- c. Within thirty (30) days after receipt of TNRCC's comments on the Draft Monitor Well Closure Activities schedule, the Performing Party shall resubmit the Final Monitor Well Closure Activities schedule with a summary note. The summary note shall clearly indicate how this document has satisfactorily addressed each comment from TNRCC's previous comments and any other changes made to this document.
- d. TNRCC will notify the Performing Party of its approval/disapproval of the Final Monitor Well Closure Activities schedule with comments.
- e. Upon approval of the Final Monitor Well Closure Activities schedule, the Performing Party shall initiate the Monitor Well Closure Activities Phase in accordance with the schedule included in the approved Monitor Well Closure Activities schedule.
- f. Upon TNRCC approval, the documents comprising the Final Monitor Well Closure Activities schedule are incorporated into this Administrative Order as requirements of this Administrative Order and shall be an enforceable part of this Administrative Order.
- g. Upon completion of all elements of the Monitor Well Closure Activities schedule, the Performing Party(ies) shall notify the TNRCC in writing that all activities detailed in the Final Monitor Well Closure Activities schedule have been completed. Upon TNRCC concurrence, the TNRCC will issue a letter indicating completion of the Monitor Well Closure Activities schedule.

VI. Failure to Attain Performance Standards or Findings of Significant Difference

If the Remedial Activities implemented in accordance with this Administrative Order by the Performing Party fail to attain the performance standards set forth in this Administrative

Order, or if the Performing Party finds that conditions at the Site differ from those anticipated by this Administrative Order and thereby significantly change the scope, performance or cost as set forth below of the Monitor Well Closure Activities anticipated by this Administrative Order, then the following actions shall be taken.

- A. Within ten (10) days of Performing Party initially determining that a probable failure to attain performance standards or significant difference as described in this Section exists, Performing Party shall notify TNRCC of that determination with a description of the basis of that initial determination.
- B. Not later than sixty (60) days after the initial determination of such failure to attain performance standards or finding of significant difference, the Performing Party shall submit to TNRCC for approval a Failure Evaluation Report.
- C. The Failure Evaluation Report shall include a discussion of the data related to the failure to attain performance standards or finding of significant difference, conclusions concerning all data obtained during the evaluation, the cause of the failure to attain performance standards or finding of significant difference, if known, and, if appropriate, a recommendation for additional study regarding the failure to attain performance standards or finding of significant difference. In cases where the Performing Party makes a claim of failure to attain performance standards or finding of significant difference, the Failure Evaluation Report shall present data consistent with the data quality objectives established for the Remedial Activities to substantiate the failure to attain performance standards or finding of significant difference.

The failure of a design or means or method of Monitor Well Closure Activities, which is not required by this Administrative Order, is not of itself the basis for a finding of failure to attain performance standards. Only when failure to attain performance standards is due to a requirement of this Administrative Order shall it be considered as a basis for application of this Item.

The finding of contaminants in quantities or extents greater than those contemplated by this Administrative Order is not of itself the basis for a finding of significant difference in the conditions at the Site. Only when variations in the quantities or extents of contamination are so significant as to render continued application of the selected remedy set forth in this Administrative Order unreasonably costly as compared with alternative appropriate remedies shall they be considered as a basis for application of this Item.

- D. After receipt of the Failure Evaluation Report, TNRCC will notify Performing Party of its approval/disapproval with identification of deficiencies.
- E. Unless TNRCC directs continuation of Monitor Well Closure Activities, within thirty (30) days after receipt of TNRCC's comments, the Performing Party shall resubmit the Failure Evaluation Report with a summary note. The summary note shall clearly indicate how this document has addressed each deficiency identified by TNRCC and any other changes made to this document.
- F. After receipt of the resubmittal of the Failure Evaluation Report, TNRCC will notify Performing Party of its approval/disapproval with identification of deficiencies.
- G. Not later than ninety (90) days after a determination by TNRCC that failure to attain performance standards or finding of significant difference does meet the criteria set forth in Item C above, the Performing Party shall submit to TNRCC for approval a written report evaluating alternatives and may submit a proposal for such additional Remedial Activities as may be necessary to achieve appropriate objectives. Any proposed alternatives must comply with the remedy selection criteria and the Risk Reduction Rules found in Subchapter S of 30 TAC Chapter 335.
- H. After receipt of the report described in Item G above, TNRCC will notify the Performing Party of its approval/disapproval with comments and identification of deficiencies.
- I. Within thirty (30) days after receipt of TNRCC's comments, the Performing Party shall resubmit the report described in Item G above with a summary note. The summary note shall clearly indicate how this document has addressed each deficiency identified by TNRCC and any other changes made to this document.
- J. After receipt of the resubmittal under Item I above, TNRCC will notify Performing Party of its approval/disapproval with identification of deficiencies. Performing Party shall resubmit the report and a summary note within fifteen (15) days of receipt of TNRCC's disapproval, until the report is approved by TNRCC.
- K. In the event TNRCC determines that alternate Remedial Activities are necessary because of the failure of the previous selected Monitor Well Closure Activities, TNRCC may terminate this Administrative Order consistent with Section XXXI, TERMINATION OF THE ADMINISTRATIVE ORDER.

VII. Designated Project Manager/Facility Coordinator

- A. All communications, whether written or oral, from Performing Party to TNRCC shall be directed to the designated TNRCC Project Manager or if not available, the designated alternate TNRCC Project Manager.
- B. Not later than the Effective Date of this Administrative Order, TNRCC will designate a Project Manager to oversee implementation of this Administrative Order and to coordinate communication between TNRCC and the Performing Party.
- C. Performing Party shall, within ten (10) calendar days after the Effective Date of this Administrative Order, appoint a Facility Coordinator who shall be responsible for overseeing of the implementation of the activities required in this Administrative Order. Performing Party shall submit a written notice to the TNRCC Project Manager at that time as to the Facility Coordinator's identity, address, phone number and/or pager number at which he may be contacted at anytime in case of emergency. The Facility Coordinator shall also be responsible for notifying the TNRCC in writing at least seven (7) calendar days prior to the start date of any field activities associated with the Post Closure Activity.
- D. The TNRCC Project Manager shall have the authority to require that the Remedial Activities are performed in accordance with all applicable statutes, regulations and this Administrative Order. In addition, the TNRCC Project Manager has the authority to require a cessation of the performance of any part or all of the Post Closure Action or any other activity at the Site that:
 - 1. In his opinion, may present or contribute to an imminent and substantial endangerment to public health, welfare, or the environment because of an actual or threatened release of hazardous substances from the Site; or
 - 2. In his opinion, is not in conformance with any approved work plan; or
 - 3. In his opinion, is a violation of any work plan, Health & Safety Plan (HASP), or Quality Assurance Project Plan (QAPP).
- E. Within 24 hours after the TNRCC Project Manager issues an oral order to halt work, if time permits, the TNRCC Project Manager will provide a brief explanation of the basis for such order. As soon as possible, but in no event more than fourteen (14) days after the initial order to halt work, a written explanation of the basis for such order to halt work will be provided to the Facility Coordinator. Work may be resumed only after the basis for the cessation has been corrected, and instructions to proceed have been provided by the TNRCC Project Manager. All additional costs associated with the cessation of work will be borne by the Performing Party.

- F. During the Monitor Well Closure Activities, meetings shall be held at least quarterly between the TNRCC Project Manager and Facility Coordinator regarding the progress and details of the Phase and to review and resolve any discrepancies in data as they deem appropriate under the circumstances. At least seven (7) days prior to each meeting, the Performing Party shall deliver an agenda for the meeting and any documents to be discussed to the TNRCC Project Manager.
- G. TNRCC and the Performing Party may change their respective Project Manager or Facility Coordinator. The other Party shall be informed in writing of the name, address, and telephone number of the new designated Project Manager or Facility Coordinator seven (7) days prior to the change, or if seven days notice is not feasible, as soon as possible.
- H. The TNRCC Project Manager may assign other Representatives, including other TNRCC employees or contractors, to serve as a Site Representative for overseeing of performance of daily operations during the Remedial Activities. The TNRCC Project Manager may delegate on a temporary basis his responsibilities and shall notify Performing Party's Facility Coordinator orally or in writing of such delegation.

VIII. Endangerment and Emergency Response

- A. In the event of any action or occurrence during the performance of the Remedial Activities which causes or threatens a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Performing Party shall immediately take all appropriate action to prevent, abate, or minimize such release or endangerment, and shall immediately notify the TNRCC's Project Manager or, if the TNRCC Project Manager cannot be contacted, the designated alternate TNRCC Project Manager. The Performing Party shall also notify the TNRCC Emergency Response Unit, Corpus Christi Region, Region 14. Performing Party shall take such action in accordance with all applicable provisions of the Health and Safety Plan and the Spill/Volatile Organics Release Contingency Plan developed under this Administrative Order. If Performing Party fails to take appropriate response action as required by this Section, and TNRCC takes such action instead, Performing Party shall reimburse TNRCC all costs of the response action. Payment of such costs of response shall be made in the manner described in Paragraph B, Section V, ORDER, of this Administrative Order.
- B. Nothing in the preceding paragraph shall be deemed to limit any authority of the State of Texas to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances in the environment on, at, or from the Site.

IX. Submittal Requiring TNRCC's Approval

- A. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Administrative Order, TNRCC will either:
 - 1. Approve the submittal; or
 - 2. Disapprove the submittal, notifying Performing Party of deficiencies.
 - 3. In the case of any HASP submitted, notify the Performing Party that the HASP has been "reviewed" and include comments if appropriate.
 - B. Upon approval of a submittal by TNRCC, Performing Party shall proceed to implement all actions required by the submittal according to the schedule approved by TNRCC.
 - C. Upon receipt of a notice of disapproval, Performing Party shall, within the time frame as specified in this Administrative Order, correct the deficiencies and resubmit the plan, report, or other item for approval.
 - D. If the situation warrants, any approved submittal may be modified upon agreement by the TNRCC and the Performing Party. Performing Party shall submit such modifications and obtain approval in accordance with the process for submittals above. Upon approval of any modification, the modification becomes part of the original submittal and is incorporated therein for all purposes.
 - E. TNRCC's approval of submittals or modifications is administrative in nature and allows the Performing Party to proceed to the next steps in the Remedial Activities. TNRCC's approval does not imply any warranty of performance, nor does it imply that the remedy, when constructed, will meet performance standards, nor does it imply that the remedy will function properly and be ultimately accepted by TNRCC.
- X. Submittal of Documents, Sampling, and Analysis
- A. Subject to the confidentiality provisions set forth in Item C below, any analytical or design data generated or obtained by the Performing Party related to the Site shall be provided to TNRCC within twenty (20) days after receipt of any request by TNRCC for such data.
 - B. Subject to the confidentiality provisions set forth in Item C below, all data, factual information, and documents submitted by the Performing Party to TNRCC pursuant to this Administrative Order shall be available to the public.
 - C. Performing Party may assert a claim of business confidentiality pursuant to the Texas Public Information Act, as to any process, method, technique, or any description thereof that the Performing Party claims constitutes proprietary or trade secret information developed by the Performing Party or developed by its contractors or

subcontractors. Performing Party shall not assert a claim of confidentiality regarding any hydrogeological or chemical data, or any data submitted in support of the Monitor Well Closure Activities. If no confidentiality claim accompanies the information when it is submitted to TNRCC, it may be made available to the public by TNRCC or the State of Texas without further notice to the Performing Party.

- D. Performing Party shall maintain, for the period during which this Administrative Order is in effect, an index of documents that Performing Party claims contain privileged information or confidential business information. The index shall contain, for each document, the date, author, addressee, and subject of the document. Performing Party shall submit a copy of the index to TNRCC within ten (10) days after receipt of the request from TNRCC.
- E. TNRCC or its Site Representatives may take splits or duplicates of any samples obtained by the Performing Party or its Site Representatives at the Site during the implementation of the Monitor Well Closure Activities and will provide the analytical results to the Performing Party within thirty (30) days of receipt. The Performing Party shall provide assistance necessary for TNRCC to take split or duplicate samples.
- F. The Performing Party shall notify TNRCC at least seven (7) days before any sampling is conducted in accordance with approved work plans and all samples shall be handled in accordance with the approved QAPP.
- G. The Performing Party shall submit all data, factual information, reports, schedules and other documents required by this Administrative Order in hard copy format and in specific computer software format as determined by the TNRCC Project Manager.

XI. Notices and Submittal

All notices and submittals required to be given under this Administrative Order shall be in writing unless otherwise expressly authorized. Documents, including reports, approvals, and other correspondence, shall be submitted pursuant to this Administrative Order to the following addressees or to such other addressees as the Party hereafter may designate in writing:

As to the Texas Natural Resource Conservation Commission:

For mail:

Texas Natural Resource Conservation Commission
Remediation Division
Superfund Cleanup Section (MC 143)
P.O. Box 13087
Austin, TX 78711-3087
Attention: TNRCC Project Manager/Baldwin Waste Oil

For overnight express mail or delivery service:

TNRCC Project Manager, MC 143
Baldwin Waste Oil State Superfund Site
TNRCC, Superfund Cleanup Section
Building D, Floor 2, Room 211
12100 Park 35 Circle
Austin, TX 78753

By facsimile:

TNRCC Project Manager
Baldwin Waste Oil State Superfund Site
Superfund Cleanup Section
(512) 239-2450

XII Periodic Review

- A. All information required to be submitted under the provisions of this Administrative Order shall be directed to the attention of the TNRCC Project Manager, Superfund Cleanup Section, Remediation Division.
- B. In addition to the deliverables set forth in this Administrative Order, Performing Party shall provide progress reports to TNRCC for all actions and activities undertaken pursuant to this Administrative Order. Performing Party's obligation to submit progress reports continues until TNRCC gives Performing Party written notice that Performing Party has demonstrated, to TNRCC's satisfaction, that all of the terms of this Administrative Order, including any additional tasks which TNRCC has determined to be necessary, have been completed.
- C. Post Closure Progress Reports

1. Commencing on and including the 10th day of the month following the month when this Administrative Order becomes effective, the Performing Party shall submit written quarterly progress reports to TNRCC. These progress reports shall describe the actions taken pursuant to this Administrative Order, including a general description of activities and progress during the reporting period, activities projected to be commenced or completed during the next reporting period, and any problems encountered or anticipated by the Performing Party in commencing or completing the Remedial Activities. Progress reports shall include all data received during the reporting period and up-to-date progress schedule. Progress reports shall identify any violations of this Administrative Order. The progress reports shall be terminated when the Site meets the conditions specified in Section XIII, Termination of Post Closure, of this Administrative Order.
2. If a progress report submitted by the Performing Party is deficient, TNRCC will notify the Performing Party within ten (10) work days after receipt of such progress report by TNRCC. The notice will include a description of the deficiencies.
3. Within ten (10) days of receipt by the Performing Party of a notice of deficiency of a progress report, the Performing Party shall make the necessary changes and resubmit the progress report to TNRCC.

XIII. Termination of Post Closure

The Monitor Well Closure Activities terminate when hazardous substances at the Site are no longer at concentrations greater than the performance standards provided in the Remedy Selection Document (Exhibit A).

XIV. Records

- A. Each Performing Party shall preserve and retain one set of all records and documents now in its possession or control or in the possession or control of its accountants or contractors that relate in any manner to its potential liability under Section 361.271 of the Act, with respect to the Site.
- B. Until completion of the Remedial Activities and satisfaction of this Administrative Order, the Performing Party shall preserve, and shall instruct its contractors and subcontractors, and anyone else acting on its behalf at the Site to preserve (in the form of originals or copies, or in the alternative, microfiche of all originals), all records, documents, and information of whatever kind, nature, or description required to be generated hereunder and relating to the performance of the Remedial Activities at the Site. TNRCC will contact the designated Facility Coordinator to determine the location and to obtain copies of the documents required by this paragraph. Upon the

completion of the Remedial Activities, copies of all such records, documents, and information as TNRCC will request shall be delivered to the TNRCC Project Manager or his or her representatives.

- C. Any Performing Party refusing to provide copies of a document based upon a claim of privilege shall identify the document and explain the basis for the claim.
- D. All records and documents in Performing Party's possession at any time prior to termination of this Administrative Order that relate to liability, public health and safety or the environment associated with the Site shall be preserved for a minimum of ten (10) years after TNRCC certification of completion of Remedial Activities under this Administrative Order. Performing Party shall acquire and retain copies of all documents that relate to the Site and are in the possession of its employees, agents, accountants, contractors, or attorneys. After this ten (10) year period, Performing Party shall notify TNRCC at least ninety (90) days before the documents are scheduled to be destroyed. If TNRCC requests that the documents be saved, Performing Party shall, at no cost to TNRCC, give TNRCC the documents or copies of the documents.
- E. Upon request by TNRCC, Performing Party shall submit to TNRCC all documents relevant to the items specified in Section 361.182(b) of the Act for possible inclusion in the administrative record in accordance with 30 TAC § 335.345.

XV. Access

- A. If a person other than those bound by this Administrative Order owns, in whole or in part, the Site, or an off-site area that is to be used for access, or other property subject to or affected by the Remedial Activities, or other property where documents required to be prepared or maintained by this Administrative Order are located, then Performing Party will obtain, or use its best efforts to obtain, Site access agreements from the present owner(s) within ninety (90) days of the Effective Date of this Administrative Order. Such agreements shall provide access for TNRCC, its contractors and Oversight officials, the state or local authorities and their contractors as approved by TNRCC, and Performing Party or Performing Party's authorized representatives and contractors. Such agreements shall specify that TNRCC is not liable for any loss or claim arising out of any activities at the Site. Copies of such agreements shall be provided to TNRCC before Performing Party initiates field activities. Performing Party's best efforts shall include, if necessary, providing reasonable compensation to any property owner not bound by this Administrative Order. If access agreements are not obtained within the time referenced above, Performing Party shall immediately notify TNRCC of its failure to obtain access. The TNRCC will, pursuant to its statutory authority, make appropriate efforts to obtain such access upon reasonable terms to Performing Party. Any revisions to the submittal deadlines necessitated by the inability of Performing Party to obtain such access shall be considered a reasonable ground for extending the deadline affected

thereby pursuant to Section XVII, EXTENSIONS OF DEADLINES, of this Administrative Order.

- B. Subject to reasonable safety and internal security requirements of Performing Party, TNRCC and its authorized representatives and contractors shall have the authority to enter, freely move about, and exit all property at the Site and off-site areas subject to or affected by the cleanup or where documents required to be prepared or maintained by this Administrative Order are located, for the purposes of: inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Performing Party and its representatives or contractors pursuant to this Administrative Order; reviewing the progress of the Performing Party in carrying out the terms of this Administrative Order; conducting tests as TNRCC or its authorized representatives or contractors deem necessary; using a camera, sound recording device or other documentary type equipment; verifying the data submitted to TNRCC by Performing Party; and performing any necessary Remedial Action not being performed by the Performing Party or not being satisfactorily performed by Performing Party. Performing Party shall allow TNRCC and its authorized representatives to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Administrative Order. Nothing herein shall be interpreted as limiting or affecting TNRCC's right of entry or inspection authority under State or Federal law. All persons with access to the Site, including TNRCC and its authorized representatives and contractors, shall comply with Site health and safety plans.

XVI. Delay in Performance

Performing Party shall notify TNRCC of any delay or anticipated delay in achieving compliance with any requirement of this Administrative Order. Such notification shall be made by telephone to the TNRCC Project Manager or if not available, the TNRCC alternate Project Manager within forty-eight (48) hours after Performing Party first knew or should have known that an event might cause a delay. Within seven (7) calendar days after notifying TNRCC by telephone, Performing Party shall provide written notification fully describing the cause of the delay, the anticipated duration of the delay, the measures taken and to be taken by Performing Party, its contractors, or consultants, to prevent or minimize the delay, and the timetable by which these measures have been, are being, and will be implemented. This revised timetable shall be implemented upon its approval by the TNRCC.

XVII. Extension of Deadlines

Notwithstanding anything to the contrary contained in this Administrative Order, if any Performing Party fails to comply with the terms and conditions of this Administrative Order (such Performing Party is referred to herein as the "Defaulting Performing Party"), the non-defaulting Performing Party shall bear no costs for any resulting fines, penalties, or TNRCC Oversight of the Remedial Activities. Defaulting Performing Party and those Parties identified

in Item A of Section II, FINDINGS OF FACT, of this Administrative Order may be assessed up to the full costs for TNRCC Oversight of the RD/RA, Post Closure Activity or other similar study. If actions required by this Administrative Order are delayed or are not timely completed because of acts or omissions of Defaulting Performing Party, the non-defaulting Performing Party may request a time extension of up to thirty (30) calendar days for the next upcoming deadline. Thereafter, it is the responsibility of the non-defaulting Performing Party to adhere to all remaining deadlines in this Administrative Order.

Performing Party may seek and the Executive Director ("ED") may grant an extension of any deadline contained in this Administrative Order or in any plan or report submitted pursuant to this Administrative Order. The request for a deadline extension shall be submitted no later than seven (7) calendar days prior to the deadline date and shall substantiate good cause by the Performing Party. The determination of what constitutes good cause and the length of the deadline extension shall be at the sole discretion of the ED.

XVIII Reserved

XIV Compliance with Applicable Laws

- A. All actions by Performing Party pursuant to this Administrative Order shall be performed in accordance with the requirements of all applicable or relevant and appropriate laws, including the Texas Solid Waste Disposal Act, Texas Health and Safety Code; and the Texas Oil and Hazardous Substance Spill Prevention and Control Act, Texas Water Code. This Administrative Order is not, and shall not be construed to be, a permit issued pursuant to any Federal or State statute or regulation.
- B. All materials removed from the Site shall be disposed of or treated at a facility which is in compliance with all applicable or relevant and appropriate Federal, State, and local requirements.

XX Force Majeure

- A. If a delay in performance is caused (in whole or in part) by events beyond the reasonable control of Performing Party, that failure shall not be construed as a violation of this Administrative Order. The burden of establishing that an event is beyond its reasonable control lies with the Performing Party. The Performing Party seeking relief shall notify the TNRCC in writing within seven (7) days of the time of commencement and within seven (7) days of the ending of any such occurrence. Failure to notify TNRCC within the seven (7) day periods in writing in accordance with this Section shall constitute a waiver of the claim of Force Majeure.

Such notice shall describe in detail the cause of the delay, the anticipated duration of the delay, the measures taken and to be taken by Performing Party, its contractors, or consultants, to prevent or minimize the delay, and the timetable by which these measures have been, are being, and will be implemented. This revised timetable shall

be implemented upon its approval by the TNRCC. However, TNRCC's approval of the revised timetable shall not be construed as excusing the delay or a waiver of TNRCC's rights to enforce this Administrative Order.

- B. Force Majeure shall not include increased costs or expenses of any of the work to be performed under this Administrative Order, nor the financial inability of any of the Performing Party to perform such work.
- C. If the TNRCC and the Performing Party cannot agree that the reason for the delay was a "Force Majeure" event or cannot agree upon the amount of additional time necessary to complete the affected Phases, then the disagreement shall be resolved according to Section XXI, RESOLUTION OF DISAGREEMENTS, of this Administrative Order. Performing Party shall have the burden of demonstrating that a "Force Majeure" is warranted under the circumstances.

XXI. Resolution of Disagreements

- A. The Performing Party and the TNRCC shall attempt to resolve on an informal basis any issues arising under Sections V through XXXII of this Administrative Order on which there is disagreement. Performing Party shall commence informal negotiations by notifying the TNRCC Project Manager in writing that there is a disagreement and that this Section is being invoked. Except as provided in Item D of this Section, informal negotiations shall not extend beyond thirty (30) days from the date TNRCC receives notification, unless the Performing Party and the TNRCC agree otherwise in writing.
- B. Performing Party shall notify TNRCC in accordance with Item A of this Section within ninety (90) days of the day Performing Party knew or should have known of the events giving rise to the disagreement. Should Performing Party fail to give such notice, the TNRCC's decision on any disagreement shall be binding.
- C. Notifying TNRCC in accordance with Item A of this Section shall not by itself postpone the deadlines for Performing Party to meet its obligations under this Administrative Order.
- D. If the TNRCC makes a determination to perform a portion or all of the Remedial Activities under Section V, ORDER, of this Administrative Order, Performing Party shall have five (5) days to commence informal negotiations by notifying TNRCC in accordance with Item A of this Section. Informal negotiations shall not extend beyond fifteen (15) days from the date TNRCC receives notification, unless the Performing Party and the TNRCC agree otherwise in writing.
- E. The procedure for any resolution of disagreements subsequent to informal negotiations shall be found in Section 361.321 of the Act.

- F. Unless otherwise specifically set forth herein, the fact that resolution of disagreements is not specifically set forth in the individual Sections of this Administrative Order is not intended to and shall not bar Performing Party from invoking this Section as to any disagreement arising under Sections V through XXXII of this Administrative Order, including any disagreement concerning the exercise of discretion by TNRCC under the terms of this Administrative Order.

XXII. Reserved

XXIII. Liability

The State of Texas, by issuance of this Administrative Order, shall assume no liability for any injuries or damages to persons or property resulting from acts or omissions by Performing Party, or its directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Administrative Order. Neither TNRCC nor the State of Texas may be deemed to be a party to any contract entered into by Performing Party or its directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Administrative Order.

XXIV. Severability

The provisions of this Administrative Order are intended to be severable and are deemed severable and, should any provision of this Administrative Order be rendered unenforceable by a court of competent jurisdiction or other appropriate authority, the remaining provisions shall remain valid and enforceable.

XXV. Reservation of Rights/Retention of Claims

Nothing in this Administrative Order shall constitute or be construed as a covenant not to sue with respect to, or a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation.

XXVI. Section Headings

The section headings set forth in this Administrative Order and its Table of Contents are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Administrative Order.

XXVII. Continuing Authority

In regard to Performing Parties listed in Item A of Section II, FINDINGS OF FACT, of this Administrative Order only, the TNRCC specifically retains authority over such Performing Parties to this action for the duration of this Administrative Order for the purposes of issuing

such further orders or directions as may be necessary or appropriate to construe, implement, modify, enforce, terminate, or reinstate the terms of this Administrative Order or for any further relief as the interest of the State of Texas may require.

XXVIII. Enforcement and Reservations

- A. Nothing herein shall preclude TNRCC from taking any additional enforcement actions including issuing additional orders as TNRCC may deem necessary, or from requiring Performing Party in the future to perform additional activities.
- B. Nothing in this Administrative Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, subsidiary or corporation for any liability it may have arising out of or relating in any way to the Site.

XXIX. Computation of Time

- A. Except where noted otherwise, all time periods referred to in this Administrative Order or attachments hereto are calendar days. Deadlines falling on a weekend or a State of Texas holiday shall be extended until the next business day.
- B. The terms "submit" and "provide" as used herein shall refer to the date on which the item in question is to be received by the appropriate Party. Submittals received by TNRCC on the deadline date shall be deemed timely.

XXX. Opportunity to Conference

- A. Performing Party may, within twenty (20) days after the Effective Date this Administrative Order is issued, request a conference with Superfund Cleanup Section staff, to discuss this Administrative Order. The request must be submitted in writing to the designated TNRCC Project Manager and the conference shall occur at the TNRCC Austin Headquarters.
- B. The purpose and scope of the conference shall be limited to issues involving the implementation of the Remedial Activities required by this Administrative Order.

XXXI. Termination of the Administrative Order

- A. The Executive Director may terminate this Administrative Order when it determines that alternate Remedial Activities are necessary because of the failure of the previous selected Remedial Activities.
- B. Except as provided in this Section, the provisions of this Administrative Order shall be deemed to be satisfied in regard to Performing Party when TNRCC notifies Performing Party in writing that Performing Party has demonstrated, to TNRCC's satisfaction, that all terms of this Administrative Order, including any amendments, have been completed. Such notice will be issued within one hundred and eighty (180) days after completion of the terms of this order. This notice shall not, however, terminate Performing Party's obligation to comply with record preservation, liability, any post closure care, and other provisions intended to survive this Administrative Order. Nor shall this notice be effective to terminate the obligations of those potentially responsible parties listed in Item A of Section II, FINDINGS OF FACT, of this Administrative Order.

XXXII. Rules of Construction

The masculine, feminine, and neuter gender shall each include the other, and the singular and plural number shall each include the other.

XXXIII. Sovereign Immunity

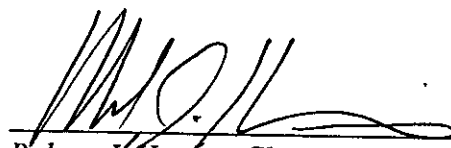
The Parties hereby agree that this Administrative Order and attached Exhibits do not waive the State of Texas' sovereign immunity relating to suit, liability, and the payment of damages. The Parties further agree that all claims, suits, or obligations arising under or relating to this Administrative Order and attached Exhibits are subject to and limited to the availability of funds appropriated by the Texas Legislature for that respective claim, suit or obligation.

The Chief Clerk shall send a copy of this Administrative Order to all Parties.

Issued date:

FEB 29 2000

Texas Natural Resource Conservation Commission


Robert J. Huston, Chairman

**BALDWIN WASTE OIL STATE SUPERFUND SITE
ADMINISTRATIVE ORDER**

EXHIBIT A

REMEDY SELECTION DOCUMENT

I. SITE NAME, LOCATION, AND DESCRIPTION

The Baldwin Waste Oil State Superfund Site is an abandoned waste oil processing facility located north of Robstown in Nueces County, Texas on the south side of County Road 44, approximately one mile north of State Highway 44 and about 1,000 feet west of Farm-to-Market Road (FM) 1889. The site occupies slightly more than 1.8 acres, with a frontage of 196 feet in length along the county road and 400 feet in depth. The site is surrounded by agricultural land. An unmanned General Telephone facility is located east of the site. Robstown is about 1.5 miles south of the site and the Nueces River is 4 miles north of the site.

II. STATEMENT OF BASIS AND PURPOSE

This document presents the selected remedial action for surface soils, subsurface soils, and groundwater, which is designed to insure protection of human health and the environment at the Baldwin Waste Oil State Superfund Site. The remedy selection was made in accordance with the Texas Solid Waste Disposal Act (codified as Texas Health and Safety Code, Chapter 361) and all applicable state and federal environmental regulations. The Remedial Action selected for this site is no further action for soils and deed recordation and natural attenuation confirmed by periodic monitoring for contaminated groundwater. The procedure used to select this remedy is described in this document.

III. SUMMARY OF SITE CONTAMINATION

During the period from 1983 through 1991, the Texas Department of Health, the Texas Department of Water Resources (and successor agencies), the EPA, and the Potentially Responsible Parties conducted inspections and investigations of this site to determine the presence of contamination and hazardous materials. These site investigations primarily focused on sampling liquid materials present in tanks, drums, containers, and surface soils. Benzene, ethylbenzene, and xylene were identified in the on-site vessels. Analyses of soil samples indicated elevated levels of lead, chromium, barium and arsenic.

In July 1992, the EPA, under their enforcement authority, performed emergency removal and remediation activities. The wastes from the various vessels along with sludge containing the metal contaminants were removed to an off-site incineration facility and the tanks and drums were cut up and removed as scrap metal. A bioremediation cell was constructed in a former tank farm area to remove the hydrocarbon compounds in the soil.

Beginning in June 1995, Foster Wheeler Environmental Corporation under contract with the TNRCC conducted an extensive remedial investigation to identify contaminants remaining at the site and to assess the risk to human health and the environment from these materials. Subsurface soil and groundwater were included in these studies.

The results of these investigations are summarized in a document entitled "Final Remedial Investigation Report for the Baldwin Waste Oil State Superfund Site" dated April 1999. These studies determined that the contaminants remaining at the site did not pose an unacceptable risk to the ecological environment.

A **Baseline Risk Evaluation Assessment** was conducted by Foster Wheeler to estimate the potential for adverse effects on human health from exposure to contaminants found at the site. Risks were determined by comparing conservatively pre-calculated medium specific concentration (MSC) values that are protective of human health, and actual chemical concentrations at a site. **Conservative assumptions** used in calculating risks weigh in favor of protecting human health. The calculated medium specific concentration values are a part of 30 Texas Administrative Code (TAC), Subchapter S, 335.568 (Risk Reduction Rules) and are called "Standard 2" values.

The risk assessment process begins with the evaluation of the current site conditions and current site risk, which assesses the risks posed to human health if the site were not cleaned up. The **Baseline Risk Evaluation Assessment** is also used to develop sufficient risk information to assist in the selection of appropriate clean-up alternatives and cleanup goals (**Remediation Goals**).

In the **Baseline Risk Assessment** for the Baldwin Waste Oil Site, the risks were calculated based on the potential exposure to site contaminants by hypothetical residents living on or near the site. It was assumed that the site would be available for future residential use. Human health can only be affected by contaminants if humans are actually exposed to those contaminants. Therefore, in the **Baseline Risk Evaluation Assessment**, potential exposures to humans (called **exposure scenarios**) were evaluated. The following potential human exposure scenarios were evaluated in detail:

- incidental ingestion of contaminated ground water;
- dermal contact with contaminated ground water;
- inhalation of airborne contaminants;
- ingestion of home-grown food that has become contaminated;
- accidental ingestion of contaminated soils; and
- dermal contact with soils and pond sediments.

The **exposure scenario** representing the most serious risk was incidental ingestion of contaminated ground water. The contaminant, which represented the greatest threat due to its toxicity, mobility and concentration, was benzene. Other **exposure scenarios** and contaminants did not contribute to the overall risk from the site.

In summary, the **Baseline Risk Evaluation Assessment** determined that because current or future residents could come into contact with contaminated ground water, the site posed an excess risk of cancer and/or non-carcinogenic toxic effects to the public from benzene if not remediated. The soils and sediments at the site were found not to pose an excess risk.

IV. DESCRIPTION OF SELECTED REMEDIAL ACTIONS

A Focused Feasibility Study was conducted to compare different possible remedial actions for this site that are based on criteria established by State regulations. The Remedial Actions for the Baldwin Waste Oil Site were selected based on the remedial alternatives that the TNRCC Executive Director determined to be the lowest cost alternatives, are technologically feasible and reliable, effectively mitigate and minimize damage to the environment, and provide adequate protection of the public health and safety and the environment.

Because the soils containing dangerous levels of contaminants were removed by the EPA during the 1992 removal action and the remaining soils contain contaminants below remediation goals, no further action is required to remediate on-site soils.

The Remedial Action selected for groundwater at the site is deed recordination and natural attenuation confirmed by periodic groundwater monitoring. The existing monitor wells will be sampled twice yearly for a period of three years. After this period the monitor wells will be sampled once each year until sample results show that natural attenuation has reduced the benzene concentrations below 0.005 milligrams per liter of groundwater (mg/L) or parts per million (ppm). This value is the remediation goal given in 30 TAC, Subchapter S, 335.568 (Risk Reduction Rules) Medium Specific Concentrations for groundwater. This concentration will be used to determine when groundwater monitoring may be discontinued.

**BALDWIN WASTE OIL STATE SUPERFUND SITE
ADMINISTRATIVE ORDER**

EXHIBIT B

RESERVED

**BALDWIN WASTE OIL STATE SUPERFUND SITE
ADMINISTRATIVE ORDER**

EXHIBIT C

RESERVED

**BALDWIN WASTE OIL STATE SUPERFUND SITE
ADMINISTRATIVE ORDER**

EXHIBIT D

DEED CERTIFICATION OF REMEDIAL ACTION

EXHIBIT D

Sample Deed Certification of Remediation

STATE OF TEXAS
NUECES COUNTY

Baldwin Waste Oil State Superfund Site Deed Certification of Remediation

KNOW ALL MEN BY THESE PRESENTS THAT:

Pursuant to the rules of the Texas Natural Resource Conservation Commission pertaining to Industrial Solid Waste Management, this document is hereby filed in the Deed Records of Nueces County, Texas in compliance with the recordation requirements of said rules:

I

Texas Natural Resource Conservation Commission has performed a remediation of the land described herein. A list of the known waste constituents, including known concentrations left in place in the groundwater, is attached hereto and is made part of this filing. Further information concerning this matter may be found by an examination of company records or in the Texas Natural Resource Conservation Commission Pollution Cleanup Division files which are available for inspection upon request at the central office of the Texas Natural Resource Conservation Commission in Austin, Texas.

The Texas Natural Resource Conservation Commission derives its authority to review the remediation of this tract of land from the Texas Health and Safety Code Annotated § 361.002 (Vernon 1992), which enables the Texas Natural Resource Conservation Commission to promulgate closure and remediation standards to safeguard the health, welfare and physical property of the people of the State and to protect the environment by controlling the management of solid waste. In addition, pursuant to the Texas Water Code Annotated §§ 5.012 and 5.013 (Vernon Supp. 1998), the Texas Natural Resource Conservation Commission is given primary responsibility for implementing the laws of the State of Texas relating to water and shall adopt any rules necessary to carry out its powers and duties under the Texas Water Code. In accordance with this authority, the Texas Natural Resource Conservation Commission requires certain persons to provide certification and/or recordation in the real property records to notify the public of the conditions of the land and/or the occurrence of remediation. This deed certification is not a representation or warranty by the Texas Natural Resource Conservation Commission of the suitability of this land for any purpose, nor does it constitute any guarantee by the Texas Natural Resource Conservation Commission that the remediation standards specified in this certification have been met by Texas Natural Resource Conservation Commission.

II

Being the North 420 feet of Lot 5, Block 6, on a 1.98 acre tract, more or less in the George H. Paul Subdivision, of the Famous Driscoll Land Survey, in Volume A, Page 81 in the map records of Nueces County, Texas.

Contaminants and waste deposited hereon have been remediated to meet residential soil criteria in accordance with a plan designed to meet the requirements of 30 Texas Administrative Code § 335.561 (Risk Reduction Standard Number 3), which mandates that the remedy be designed to eliminate or reduce to the maximum extent practicable, substantial present or future risk. The remediation plan does require continued post-closure care and institutional control measures to protect human health and the environment. Post Closure Measures include natural attenuation confirmed by periodic groundwater monitoring. Future use of the property is considered appropriate for residential use in accordance with risk reduction standards applicable at the time of this filing. Institutional or legal controls placed on the property to ensure appropriate future use include groundwater deed recordation.

The current or future owner must undertake actions as necessary to protect human health or the environment in accordance with the rules of the Texas Natural Resource Conservation Commission.

III

The former owner of the site is Florence Studer and its location is one mile north of Robstown in Nueces County, Texas on the south side of County Road 44, approximately one mile north of State Highway 44 and about 1,000 feet west of Farm-to-Market Road (FM) 1889.

EXECUTED this the _____ day of _____, 20____.

by: _____

[Name]

[Title]

[Company's Name]

[State of Incorporation]

STATE OF TEXAS

_____ COUNTY

BEFORE ME, on this the ____ day of _____, personally appeared _____ of _____ known to me to be the person and agent of said corporation whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same for the purposes and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the _____ day of _____, 20____.

Notary Public in and
for the State of Texas,

County of _____

My Commission Expires: _____

EXHIBIT E

LIST OF SOLID WASTE AND HAZARDOUS SUBSTANCES DOCUMENTED AT THE BALDWIN WASTE OIL STATE SUPERFUND SITE

PART 1: THE FOLLOWING ARE DOCUMENTED SOLID WASTES AT THE BALDWIN WASTE OIL STATE SUPERFUND SITE

WASTE OIL PROCESSING SOLVENTS

WASTE MATERIALS

WASTE OIL

PART 2: THE FOLLOWING DOCUMENTED SOLID WASTES ARE ALSO DOCUMENTED HAZARDOUS SUBSTANCES AT THE BALDWIN WASTE OIL STATE SUPERFUND SITE

BENZENE

**BALDWIN WASTE OIL STATE SUPERFUND SITE
ADMINISTRATIVE ORDER**

EXHIBIT F

RESERVED